

- DECISION -

Claimant:
IRENE J. WHITE

Decision No.: 03251-BR-97
Date: September 29, 1997
Appeal No.: 9714050
S.S. No.:
L.O. No.: 01
Appellant: Claimant

Employer:
SUNDRY EDUC SERV
C/O PERSONNEL TECH

Issue: Whether the claimant is unemployed between academic years or terms, or during a customary vacation period, from an educational institution and has reasonable assurance of returning to work within the meaning of MD Annotated Code, Labor and Employment Article, Title 8, Section 909.

- NOTICE OF RIGHT OF APPEAL TO COURT -

You may file an appeal from this decision in the Circuit Court for Baltimore City or one of the Circuit Courts in a county in Maryland. The court rules about how to file the appeal can be found in many public libraries, in the Maryland Rules of Procedure, Title 7, Chapter 200.

The period for filing an appeal expires: October 29, 1997

REVIEW ON THE RECORD

Upon review of the record in this case, the Board of Appeals reverses the decision of the Hearing Examiner.

Section 8-909 provides that with respect to services performed for an educational institution in any capacity other than instructional, research, or principal administrative, benefits may not be paid on the basis of the services for any week of unemployment that begins during a period between 2 successive academic years or terms.

The claimant's position with the employer is "hall monitor", clearly not an instructional, research or principal administrative capacity. Therefore, the requirements of LE, Section 8-909(c) apply. Subsection (3) requires that the educational institution provide the Department of Labor, Licensing and Regulation the names and social security numbers of all employees performing covered employment under this section of the law, who have reasonable assurance. There is no evidence that this was ever done for the claimant. Further, the evidence is that the claimant did not receive any reasonable assurance in writing.

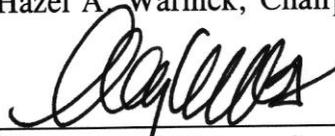
Therefore, the Board is reversing the decision of the Hearing Examiner and concludes that the claimant is not disqualified from the receipt of benefits under this section of the law.

DECISION

IT IS HELD THAT the claimant has not been given reasonable assurance for employment when school reopens. Pursuant to Section 8-909 of the Maryland Unemployment Insurance Law, benefits are allowed.

The decision of the hearing examiner is reversed.

Hazel A. Warnick, Chairperson



Clayton A. Mitchell, Sr., Associate Member

dt

Copies mailed to:
IRENE J. WHITE
SUNDRY EDUC SERV
Local Office - #01

UNEMPLOYMENT INSURANCE APPEALS DECISION

IRENE J. WHITE

Before the:

SSN #

Claimant

vs.

SUNDRY EDUC SERV
C/O PERSONNEL TECH

Employer/Agency

Maryland Department of Labor, Licensing
and Regulation
Appeals Division
1100 North Eutaw Street
Room 511
Baltimore, MD 21201
(410) 767-2421

Appeal Number: 9714050
Appellant: Employer
Local Office: 01 / Baltimore

August 8, 1997

For the Claimant:PRESENT

For the Employer:PRESENT, RENEE HAMMOCK

For the Agency:

ISSUE(S)

Whether the claimant is unemployed between academic years or terms, or during a customary vacation period, from an educational institution and has reasonable assurance of returning to work within the meaning of MD Annotated Code, Labor and Employment Article, Title 8, Section 909.

FINDINGS OF FACT

The claimant first began work for this employer on April 26, 1993 and her last day of work was June 16, 1997. The claimant works as a hall monitor with the school for a salary of \$6.50 per hour. The claimant has worked for the last four years at the same school. The claimant is to return to work on August 26, 1997. The claimant normally receives a phone call from the secretary of the school to inform her when to report to work. This is has occurred for the last four years.

CONCLUSIONS OF LAW

Md. Code Ann., Labor & Emp., Section 8-909(c) (Supp. 1994) provides:

- (1) With respect to services performed for an educational institution in any capacity other than instructional, research or principal administrative, benefits may not be paid on the basis of the services for any week of unemployment that begins during a period between 2 successive academic years or terms.
- (2) This subsection applies to any individual who:
- (i) performs the services described in this subsection in the first of 2 academic years or terms; and
 - (ii) has a reasonable assurance that the individual will perform the services in the second of the 2 successive academic years or terms.

To meet the "reasonable assurance" standard, an employer need not demonstrate that an employee is guaranteed the job in the next academic semester. Rather, the employer must establish that the claimant has a reasonable expectation of being recalled to perform the same or similar services.

EVALUATION OF EVIDENCE

Based upon the record of this hearing the claimant does have a reasonable assurance of returning to the same school in the same position that she has held for the last four years.

DECISION

IT IS HELD THAT the claimant had reasonable assurance of returning to the same or similar employment with an educational institution in the next academic year within the meaning of Md. Code Ann., Labor & Emp., Section 8-909 (Supp. 1994). The claimant is disqualified from receiving unemployment benefits based upon employment with Sundry Education Service from the week beginning June 15, 1997 and until the start of the successive academic year commencing with the week beginning August 24, 1997.

It should be noted that a claimant may be eligible for unemployment insurance benefits under other covered employment, even though wages from the above employer may not be used to determine the claimant's weekly benefit amount.

A. K. Davis,ESQ.
Hearing Examiner

Notice of Right of Further Appeal

Any party may request a further appeal **either in person or by mail** which may be filed in any local office of the Department of Labor, Licensing and Regulation, or with the Board of Appeals, Room 515, 1100 North Eutaw Street, Baltimore, MD 21201. Your appeal must be filed by **August 25, 1997**.

Note: Appeals filed by mail are considered timely on the date of the U.S. Postal Service postmark.

Date of hearing: July 31, 1997

CH/Specialist ID: 01057

Seq. No.: 004

Copies mailed on August 8, 1997 to:

IRENE J. WHITE
SUNDRY EDUC SERV
LOCAL OFFICE #01